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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

SAMIRA HARIRAMASAMY,

Plaintiff and Respondent,

v.

ZACHARY CALHOUN et al.,

Defendants and Appellants.

H043857

(Santa Clara County
Super. Ct. Nos. CH005766,
CH005767)

Appellants Zachary Calhoun and Stefan Calhoun appeal from orders holding them in contempt of court. Respondent Samira Hariramasamy obtained temporary restraining orders against the Calhouns,¹ who are her next-door neighbors. The parties met with a court-ordered mediator on Hariramasamy's request for a civil harassment restraining order and agreed to terms of conduct, which were memorialized in a stipulated court order. Hariramasamy later filed orders to show cause and affidavits for contempt, alleging multiple violations of the stipulated order. After a bench trial, the court agreed and found the Calhouns each in contempt on several of the counts charged.

On appeal, the Calhouns challenge the validity of the stipulated order underlying the contempt proceedings and contend there was insufficient evidence that they knew of the court order or willfully violated it. A contempt judgment or order, however, is not appealable. (Code Civ. Proc., §§ 904.1, subd. (a), 1222.) Because the case presents no

¹ We at times use appellants' given names, Zachary and Stefan, when necessary to distinguish between the family members. We mean no disrespect by doing so.

special circumstances that might warrant treating the appeal as a petition for extraordinary writ relief, we will dismiss the appeal as taken from a nonappealable order.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Stipulated Order and Contempt Allegations

Hariramasamy filed requests for civil harassment restraining orders against Zachary Calhoun and Stefan Calhoun in August 2014. She declared that the Calhouns had accosted her household on multiple occasions by yelling and acting in a threatening manner and by repeatedly claiming to the police that her home was the site of a “meth lab”; she was concerned for her family’s safety and named her husband and young daughter as protected persons. A police report from the Los Altos Police Department, appended to the restraining order requests, documented several of these occurrences. The trial court issued temporary restraining orders in both cases.

The parties appeared in court later that month and were directed to mediation where they agreed to end the conflict. The agreement was memorialized on judicial council forms titled “Stipulation and Order” and “Attachment to Stipulation and Order” (together “stipulated order”). The stipulated order contained handwritten terms,² the judge’s order and signature, and the parties’ signatures. Except for the first page—which bore only Hariramasamy’s initials—all three individuals initialed or signed every page of the four-page stipulated order. The stipulated order was filed by the court that same day.

Several months later, Hariramasamy filed orders to show cause and affidavits for contempt in both cases. She alleged that the Calhouns had knowingly and willfully violated the stipulated order and that their behavior was “substantially worse” than

² The terms stated that the parties agreed to “minimal communication” limited to the issues discussed, and that Zachary and Stefan agreed to not yell at or bother Hariramasamy or her family, not bang or shake the fence, and not go on her property. There were also terms related to payment for an inspection, and if needed, repair and replacement of the Hariramasamy’s dryer (due to noise).

before. She recounted incidents in October, November, and December 2014 and attached witness affidavits. Her husband had called the police during the December incidents and had recorded the Calhouns as they shouted invectives over the fence.

The trial court issued new temporary restraining orders and arraigned the Calhouns on the contempt citations.³ The court identified eight counts of contempt as alleged by Hariramasamy. These were: yelling at the Hariramasamy family in a threatening manner (counts 1 & 2); shaking or banging on the fence (counts 3, 4, 5 as to Stefan); playing drums in the middle of the night (counts 6 & 7); and failing to pay for certain repairs specified in the stipulated order (count 8 as to Zachary). The court advised the Calhouns of potential fines and penalties on each count, including up to five days in county jail.

B. Contempt Trial and Findings and Order After Hearing

There was a bench trial on the contempt charges. The trial court took judicial notice of the underlying stipulated order, heard testimony from Hariramasamy's husband, and admitted police reports from two of the alleged incidents into evidence.⁴

Counsel for the Calhouns argued that there was a failure of proof of contempt because the unsigned first page of the underlying stipulated order undermined the validity of the order. He argued there was insufficient evidence that the Calhouns knew there was a court order and that a reasonable person would not have understood that the stipulation was going to become an order as opposed to an agreement between neighbors. When the

³ Counsel for Zachary and Stefan waived formal arraignment.

⁴ In a police report from December 14, 2014, Stefan explained to the officer that he was “ ‘pissed off’ ” due to odor and noises from the Hariramasamy residence so he began yelling random obscenities across the fence and that “ ‘they need to be deported.’ ” Zachary also asked the officer to take a statement, saying “ ‘As far as I am concerned, anything we do short of killing these bastards . . . I want somebody to run over them with a truck. Based on what they have done, they don’t deserve to live in this Country. . . . These are miserable bastards—sons-of-bitches—that don’t belong on this Earth.’ ”

court rejected the Calhouns' argument for nonsuit, their counsel made an offer of proof, which the court accepted as true. This was that the Calhouns believed they had agreed to resolve their conduct with the neighbors but did not believe they were under court order.

The court stated its ruling on the record. It noted the first page of the stipulated order was not initialed by either Zachary or Stefan but found that the order elsewhere advised that proven violations might be considered contempt of court and could carry civil and criminal penalties. The court found the evidence at trial to be "quite startling" and racially motivated. It found that Zachary and Stefan had violated a valid court order as to three of the incidents alleged in the contempt affidavits. The court held both men in contempt as to counts 1 and 2 for yelling incidents on December 21 and 14, 2014, and held Stefan in contempt as to count 5 for banging on the fence on November 26, 2014. The court imposed one year of court probation and a fine of \$500 each, payable to the court, and stated that Hariramasamy might be eligible for fees and costs. The court also issued civil harassment restraining orders as to Stefan and Zachary for the maximum three-year period.

The trial court filed its findings and orders on the contempt charges on September 16, 2015 (contempt orders). The orders reflected the punishment recorded at trial and directed each Calhoun to pay attorney fees and costs of \$3,842.22 each, representing 70 percent of contempt costs and 30 percent of restraining order costs. Appellants timely appealed from the contempt orders.⁵

⁵ The Calhouns filed separate notices of appeal but designated one record; this court, on its own motion, ordered that all proceedings pertaining to the notices of appeal be conducted in the same case number (H043857). No respondent's brief was filed. We therefore decide the appeal on the record and the opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

II. DISCUSSION

Contempt judgments and orders “are final and conclusive” (Code Civ. Proc., § 1222) and are not appealable. (Code Civ. Proc., § 904.1, subd. (a)(1); *People v. Gonzalez* (1996) 12 Cal.4th 804, 816.) Appellate review of a trial court’s order or judgment in a contempt proceeding may be obtained by a petition for writ of certiorari or, where appropriate, by habeas corpus. (*In re Buckley* (1973) 10 Cal.3d 237, 259; *In re M.R.* (2013) 220 Cal.App.4th 49, 65.) We consider on our own motion whether the appeal is taken from an appealable order. (*In re M.R.*, *supra*, at p. 64; *Olson v. Cory* (1983) 35 Cal.3d 390, 398 (*Olson*) [“since the question of appealability goes to our jurisdiction, we are duty-bound to consider it on our own motion”].)

The appeal in this case was taken from the findings and orders in the contempt proceedings, filed by the trial court on September 16, 2015. Under Code of Civil Procedure section 1222, the contempt orders were “final and conclusive” and therefore were not appealable. (Code Civ. Proc., § 904.1, subd. (a)(1).) Because “[t]he existence of an appealable judgment is a jurisdictional prerequisite to an appeal” (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126), we issued an order to show cause why the appeal should not be dismissed as from a nonappealable order.

In response, the Calhouns have asked this court to exercise its inherent discretion to treat the appeal from a nonappealable contempt order as a petition for extraordinary writ relief. They argue that the appeal “is as much from a [r]estraining [o]rder issued pursuant to a [s]tipulation as it is from a finding of contempt.” The Calhouns have not sought to argue, in either their opening brief or in response to the order to show cause, that the appeal was taken from the order for attorney fees and costs.

The appellate court’s discretionary power to treat a purported appeal from a nonappealable order as a petition for writ of mandate should be exercised only in extraordinary circumstances. (*Sears, Roebuck & Co. v. National Union Fire Ins. Co. of Pittsburgh* (2005) 131 Cal.App.4th 1342, 1349; see *Olson*, *supra*, 35 Cal.3d at p. 401

[reviewing court should not exercise its “power to treat the purported appeal as a petition for writ of mandate . . . except under unusual circumstances”].) Such extraordinary or unusual circumstances are not present here.

First, the appealability of a contempt order or judgment is not debatable (see Code Civ. Proc., §§ 904.1, subd. (a)(1), 1222), and ample case authority establishes that a party must seek writ relief in these circumstances. (See, e.g., *People v. Gonzalez*, *supra*, 12 Cal.4th at p. 816; *In re M.R.*, *supra*, 220 Cal.App.4th at pp. 64-65; *Davidson v. Superior Court* (1999) 70 Cal.App.4th 514, 522.) This distinguishes the Calhouns’ request to treat the improper appeal as a writ petition from a case in which “the issue of appealability was far from clear in advance. . . .” (*Olson*, *supra*, 35 Cal.3d at p. 401 [listing grounds to treat purported appeal as petition for writ relief].)

Nor do the Calhouns state an argument or offer authority to support their response to the order to show cause, other than to suggest that this court can review the validity of the stipulated order underlying the contempt findings by construing the appeal as taken from the “[r]estraining [o]rder issued pursuant to a [s]tipulation” But any appeal from the underlying stipulated order is untimely.⁶ The Calhouns similarly have offered no support for their request that we treat the appeal as a petition for extraordinary writ relief. Thus they fail to meet their burden as appellants to support their contentions with argument and legal authority. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Finally, a brief review of the merits of the appeal supports our conclusion that extraordinary writ relief is not warranted. Hariramasamy’s charging affidavit alleged

⁶ The stipulated order was filed on August 26, 2014. The notices of appeal from the contempt orders were filed on December 3, 2015. The entry of a restraining order is appealable as an appeal from an order granting an injunction. (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 187, citing Code Civ. Proc., § 904.1, subd. (a)(6); Cal. Rules of Court, rule 8.104(a)(1).)

multiple violations of the stipulated order. The Calhouns contend on appeal that the stipulated order was not a valid order and could not support a contempt finding. They submit that the stipulated agreement never became part of a court order because page one lacked either of their initials, page four advised that the agreement replacing the temporary restraining order was “a contractual agreement and not a CLETS restraining order,” and the stipulation lacked specificity about the conduct required and until when it would remain in effect.

It is true that “ ‘[a]n order of contempt cannot stand if the underlying order is invalid.’ ” (*People v. Gonzalez, supra*, 12 Cal.4th at p. 816.) Indeed, it is the “willful refusal to obey a *valid* court order” that defines an act of contempt. (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1014 (*Marcus*) (italics added); Code Civ. Proc., § 1209, subd. (a)(5).) The responsibility of the court reviewing a contempt order is to ascertain whether there was any substantial evidence before the trial court to prove the elements of the contempt. (*Marcus, supra*, at p. 1015; *In re Buckley, supra*, 10 Cal.3d at p. 247.)

There is substantial evidence that Zachary and Stefan were advised of the nature and enforceability of the stipulated agreement as a court order. Page two of the stipulated order contains the handwritten terms of conduct, which the Calhouns initialed. Page three states, “We have read this entire Stipulation and Order, including any attachments. We understand it fully and ask that the court make our stipulation the court’s order. We give up the right to all further notice of this order.” The Calhouns signed their names under the advisement, which is followed by the court’s signature block and the statement, in boldface, that “[t]he Court approves the terms stipulated and agreed to in this document by the parties and makes them court orders.” Page four, which the Calhouns also signed, provides a bullet list of acknowledgments, including that the stipulated order “represents the exact terms of [the] agreement,” “is a commitment to agreed future behaviors as stated,” “is a contractual agreement and not a CLETS restraining order,” and

that “proven violation of the orders written above may be considered contempt of court and subject . . . to civil and criminal penalties (fines/jail time).”

The stipulated order was on its face “clear, specific, and unequivocal” (*Marcus, supra*, 138 Cal.App.4th at p. 1014) about the demands it placed on the parties and its enforceability for contempt. The Calhouns have offered no authority for the proposition that the missing initials on page one invalidated the stipulated order. We find the fact that the Calhouns signed and initialed the stipulated order in several places, together with the advisements printed on the signed pages and the “uncontradicted” evidence at trial of several violations of the stipulated order, supplied substantial evidence of willful noncompliance with a valid court order. (*Ibid.*; *Moss v. Superior Court* (1998) 17 Cal.4th 396, 428 [The elements of proof for a contempt finding require (1) a valid court order, (2) the alleged contemnor’s knowledge of the order, and (3) willful noncompliance].)

We abide by the settled rule “ ‘that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.’ ” (*People v. Mazurette* (2001) 24 Cal.4th 789, 792.) We will not treat the appeal from the nonappealable orders in the contempt proceedings as a writ petition; instead, we will dismiss the appeal.

III. DISPOSITION

The appeal from the contempt orders in both cases is dismissed.

Greenwood, P.J.

WE CONCUR:

Elia, J.

Grover, J.